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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,016	01/29/2004	Lawrence R. Foore	TAN-2-1400.06.US	4719

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VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

EXAMINER	
QURESHI, AFSAR M	

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
01/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/767,016	FOORE ET AL.	
	Examiner	Art Unit	
	Afsar M. Qureshi	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/26/2007 (RCE and Amendment)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *37-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *37-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/26/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

AQ.

DETAILED ACTION

Response to Amendment

1. This Office Action is responsive to RCE/Amendment received on 12/26/2007.

2. Applicant cancelled claims 1-36 and added new claims 37-46.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims37-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 31, 32, 34-41, respectively, of copending Application No. 10/767,326. Although the conflicting claims

are not identical, they are not patentably distinct from each other because of the following reasons.

This is a **provisional** obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 1 of instant application (10/767,016) has the limitations "*transmitting data to a base station over a plurality of wireless channels*" is an obvious variation of limitation of application 10/767,326, claim 31, " *a transceiver configured to communicate over a plurality of wireless channels with a transmitter in a base station*". Here transceiver is 'user device' of instant application. Similarly, the other limitations, of instant application, are similar to one claimed in the application 10/767,326.

Therefore claim 1, of instant application is an obvious variation of claim 31, application 10/767,326.

Claims 38-46 are duplicate to claims 32 and claims 34 through 41 (claims 38=32, 39-46=34-41, respectively).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 37-39 and 41-46 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,542,481. Although the conflicting claims are not identical, they are not patentably distinct from each other because subject matter of above application claims are either similar or an obvious variation of subject matter already claimed in Patent clam 14.

For example:

Application claim 37, claiming '*transmitting data to a base station over a plurality of wireless channels*' is same as base station transmitter... of Patent claim 14; '*receiving data traffic from ...data buffer...wireless channels*' also claimed in Patent claim 14 wherein subs. unit receiver receiving data over plurality of wireless channels, each transceiver is assigned at least one wireless channel; similarly, urgency factor, as claimed herein, is already claimed in Patent claim 14, as an urgency factor indicative of the urgency of the data traffic transmitted to subs. unit receiver.

Application claims 38, 'urgency factor is determined using the amount of data traffic present in the ....data buffer...'. is similar to the limitation in Patent claim 14, the

urgency factor, in Patent claim 14, is determined based on the data traffic present in the queue (data buffer) wherein data is received over wireless channel.

Application claim 39, the limitation herein, is also an obvious variation of limitation claimed in patent claim 14 wherein '*allocating optimum number of wireless channels.....receiving data traffic*' is already claimed in Patent claim 14, 'optimum number of channels ...assigned to ...subscriber unit receiver'.

Application claims 41,42 and 43, the limitations herein are already claimed in Patent claim 14, wherein each subscriber unit receiver is associated with at least one data queue, configured to store data traffic, and channel allocation is based on particular traffic type.

Application claim 44, 'data traffic ....corresponding to a particular traffic type attribute', is similarly claimed in Patent claim 14, wherein each of the data queues operable to handle data traffic having a particular traffic type attribute.

Therefore it would have been obvious to one of ordinary skill in the art, at the time of invention, that the claimed subject matter of claims 37-39 and 41-46 are obvious variations of Patent claim 14 realizing the same invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quick Jr. (US 5,673,259) in view of obviousness.

Claims 37-44, Quick Jr.('Quick') discloses a CDMA cellular telephone system, used in CDMA applications, having forward link and reverse link, mobile stations 102 (fig. 1) (transceivers) and base stations 108. Mobile station (transceiver) transmits call request on "Access channels" and is configured to receive data traffic from base stations on a "Dedicated traffic channel" to carry the VOICE information (see col. 3, lines 63 through col. 4, lines 1-7). Quick further discloses a searcher reservation scheme which uses a priority (urgent factor) assignment algorithm based on type (user specific long code used to encode data and voice transmission) and amount of traffic in the queues (buffer), to be transmitted to the CDMA user device, wherein device receiving data traffic on at least one "Dedicated channel" (see col. 9, lines 50 through col. 10, lines 1-4).

Quick does not specifically indicate that receiving data traffic from the base station is based on urgency factor, however, it would have been obvious to one of ordinary skill in the art, at the time of invention, that communication over wireless 'dedicated channel' is prioritized based on type of data (voice/real time) and amount of traffic (urgency factor) via searcher reservation scheme used by Quick (see col. 8, lines 52 through col. 9, lines 1-28).

Claims 45-46, Quick discloses bandwidth demand associated with thresholds as traffic type attribute. Quick does not specifically disclose if the data buffer is hardware controlled by fast cache memory (claim 41). However, Quick discloses a processor 302 (fig. 3), and while in switching signals, is capable of storing data packets correspond to threshold levels and based on bandwidth demand, these data packets are transmitted controlled by searcher scheme (software) (see col. 11, lines 5-53). It is known and old that a computer, processor 302 in this case, has fast cache memory capable of storing instructions, when executed, used to control transmission from buffers. Therefore it would have been obvious to one of ordinary skill in the art, at the time of invention, to be able to modify processor 302, utilizing fast cache memory to control data buffer in order to facilitate an efficient data packet transmission to a cell site in a CDMA system.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Masui et al. (US 6,570,865)

Anderson et al. (US 6,532,365)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Afsar M. Qureshi whose telephone number is (571) 272 3178. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Field Lynn can be reached on (571) 272 2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AFSAR QURESHI
PRIMARY EXAMINER

1/10/2008